

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ AUG 15 2012 ★

-----X
MICHAEL MILLER,
individually and on behalf of the class defined
herein,

Plaintiff,

v.

ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, GREENBERG, FORMATO &
EINIGER, LLP, and ROBERT FENSTERMAN,

Defendants.
-----X

10-cv-2156

Judge Bianco

Magistrate Judge Tomlinson

LONG ISLAND OFFICE

PRELIMINARY APPROVAL ORDER

This matter coming before the Court on Plaintiff's request for preliminary approval of a Class Settlement Agreement ("Agreement"), between Plaintiff Michael Miller, and Defendants, Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP and Robert Fensterman, ("Defendants"), and notice to the class, the Court being fully advised as to the premises, HEREBY ORDERS:

1. The Court finds that the proposed settlement is within the range of fairness and reasonableness and grants it preliminary approval.

2. The Court hereby certifies a class for the purposes of settlement consisting of:

(a) all natural persons, other than spouses (b) to whom defendants sent a letter similar in form to that represented by Exhibit A (c) in an attempt to collect a debt for nursing home care provided to someone other than the person to whom the letter is addressed, (d) on behalf of a nursing home which accepts Medicaid or Medicare for any patient (e) which letter was sent during a period beginning on May 11, 2009 and ending on May 31, 2010.

And

(a) all natural persons (b) to whom defendants sent a letter similar in form to that represented by Exhibit A which bore the purported signature of Robert Fensterman (c) in an attempt to collect a small claims debt for a nursing home (d) which letter was sent during a period beginning on May 11, 2009 and ending on May 31, 2010.

3. The Court appoints Edelman, Combs, Lattuner & Goodwin, LLC and Kleinman, LLC as counsel for the certified class.

4. Defendant shall, within 10 days of filing the motion for preliminary approval, shall serve upon the appropriate State official of each State in which a class member resides, the appropriate Federal official, and class counsel, the notice required under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §1715(b).

5. The Court approves the proposed form of notice to the class, to be directed to the last known address of the class members as shown on Defendant's records. Defendants shall, provide Plaintiff's counsel with a list – based on their records – of the names and last known addresses of each Class Member and any amounts paid by the class members on or before August 30, 2012 (15 days from the entry of this Preliminary Approval Order). Plaintiff's counsel shall be responsible for mailing, or causing to be mailed notice to class members on or before October 1, 2012 (45 days from the entry of this Preliminary Approval Order). Plaintiff's counsel will have the notice sent by U.S. mail. Plaintiff counsel will be responsible for resending any notice that is returned with a forwarding address. Plaintiff's counsel will also be responsible for causing the settlement checks to be distributed.

6. A hearing on the fairness and reasonableness of the Agreement and whether final approval shall be given to it and the requests for attorney fees, costs, and expenses by counsel for the class will be held before this Court on December 17, 2012 at 1:30 p.m. (approximately 120 days from the entry of this Preliminary Approval Order). Any

memorandums in support of final approval shall be filed by December 10, 2012 (7 days prior to the date for the Final Approval Order).

7. The Court finds that mailing of the class notice and the other measures specified above to locate and notify members of the class is the only notice required and that such notice satisfies the requirements of due process and Fed. R. Civ. P. 23(c)(2)(B).

8. Class members shall have until November 15, 2012 (45 days from the mailing of the notice) to opt out or object to the proposed settlement. Any class members who desire to exclude themselves from the action must mail a request for exclusion to counsel for plaintiff with a copy to the Court by that date. Any class members who wish to object to the settlement must submit an objection in writing to the Clerk of the United States District Court for the Eastern District of New York, and also serve copies of the objection on counsel for Plaintiff by that date. Any objection must include the name and number of the case and a statement of the reasons why the objector believes that the Court should find that the proposed settlement is not in the best interests of the class. Objectors who have filed written objections to the settlement must also appear at the hearing and be heard on the fairness of the settlement.

DATE: August 15, 2012

S. Bianco

The Honorable Joseph Bianco
United States District Judge